

122 FERC ¶ 61,243
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Idaho Power Company

Docket Nos. OA07-60-000
OA07-60-001

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued March 19, 2008)

1. On July 13, 2007, as amended on September 17, 2007, pursuant to section 206 of the Federal Power Act (FPA),¹ Idaho Power Company (Idaho Power) submitted its compliance filing as required by Order No. 890.² In this order, we will accept Idaho Power's filing, as modified, as in compliance with Order No. 890, as discussed below.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

¹ 16 U.S.C. § 824e (2000 & Supp. V 2005).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have not been approved as independent system operators (ISO) or regional transmission organizations (RTO), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit, within 120 days from publication of Order No. 890 in the *Federal Register* (i.e., July 13, 2007), section 206 compliance filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890.³

II. Idaho Power's Filings

4. In its July 13, 2007 filing, Idaho Power states that its revised OATT reflects Idaho Power's previously effective OATT updated to include the Order No. 890 *pro forma* OATT revisions. In addition, Idaho Power states that, in order to simplify pagination and other tariff designation issues, it has chosen to refile its entire OATT. Idaho Power also states that it has made certain administrative changes to its Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA) and has changed deadlines in sections 14.6 (Scheduling of Non-Firm Point-To-Point Transmission Service) and 18.3 (Reservation of Non-Firm Point-To-Point Transmission Service) of its OATT to reflect regional practice. Idaho Power requests that its revised tariff be made effective July 13, 2007.

5. In its September 17, 2007 filing in Docket No. OA07-60-001, Idaho Power states that it was submitting certain substitute tariff sheets as a result of the August 8, 2007 issuance of an order approving an uncontested partial settlement in Docket No. ER06-787-004.⁴ Idaho Power explains that, in the Settlement Order, the Commission accepted certain tariff sheets implementing the partial settlement effective June 1, 2006, and as such, the tariff sheets were technically in effect on July 13, 2007 when Idaho Power submitted its Order No. 890 compliance filing. Idaho Power states that because the Settlement Order had not been issued before it filed its Order No. 890 compliance filing, the revised OATT submitted on July 13, 2007 did not reflect the modifications stemming from the then-pending settlement. Idaho Power states that the modifications reflected in the substitute tariff sheets do not conflict with any provisions of Order No. 890 or the Order No. 890 *pro forma* OATT. Idaho Power also states that, as it is substituting tariff sheets for those filed in its July 13, 2007 Order No. 890 compliance filing, it requests an effective date of July 13, 2007 for the substituted tariff sheets.

³ The original 60-day compliance deadline provided for in Order No. 890 was extended by the Commission in a subsequent order. *See Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007).

⁴ *Idaho Power Co.*, 120 FERC ¶ 61,144 (2007) (Settlement Order).

III. Notice of Filing and Responsive Pleadings

6. Notices of Idaho Power's filings were published in the *Federal Register*, 72 Fed. Reg. 41,728 (2007) and 72 Fed. Reg. 56,735 (2007), with interventions and protests due on or before August 3, 2007 and October 9, 2007, respectively. Powerex Corp. (Powerex) filed a timely motion to intervene and comments.⁵ Bonneville Power Administration (BPA) filed a timely motion to intervene and protest, and the City of Seattle filed a motion to intervene out of time. On August 30, 2007, Idaho Power filed motions for leave to answer and answers to the protests.

IV. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214(d) (2007), the Commission will grant City of Seattle's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Idaho Power's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

Docket No. OA07-60-001

9. In the Settlement Order, the Commission accepted certain tariff sheets implementing the partial settlement in Docket No. ER06-787-004 effective June 1, 2006;⁶ however, the Settlement Order was issued after July 13, 2007 when Idaho Power submitted its compliance filing as required under Order No. 890. We find that the modifications reflected in the substitute tariff sheets do not conflict with any provisions

⁵ In its comments, Powerex opposes certain of Idaho Power's OATT revisions and suggests that the Commission direct Idaho Power to modify certain provisions. Accordingly, we will treat Powerex's comments as a protest.

⁶ *Idaho Power Co.*, 120 FERC ¶ 61,144 at P 4.

of Order No. 890 or the Order No. 890 *pro forma* OATT. Accordingly, we accept the substitute tariff sheets effective July 13, 2007, as requested.

Docket No. OA07-60-000

10. As a preliminary matter, we note that on August 30, 2007 in Docket No. ER07-1315-000,⁷ Idaho Power submitted an FPA section 205 filing to address, among other things, concerns raised by the protestors in the instant proceeding. In its protest BPA had argued that Idaho Power's creditworthiness provision, as provided in its new Attachment L, is more restrictive on governmental agencies than on non-governmental entities. In its protest, Powerex expressed concerns with Idaho Power's proposed provisions implementing simultaneous submission windows for service requests subject to "no earlier than" deadlines. Specifically, Powerex stated that although the proposed section 13.2 (Reservation Priority) includes the *pro forma* OATT provision describing the reservation priority attributes for short-term firm point-to-point service, Idaho Power's simultaneous window language does not provide any mechanism for using these priorities for requests submitted within the window. Powerex also argued that Idaho Power's proposal to allocate capacity equally among simultaneously submitted requests disproportionately impairs transmission access to higher-volume customers. In addition, Powerex expressed concern with references in section 13.2 which describes the opening of simultaneous submission windows as the start of the "applicable pre-schedule day" because, according to Powerex, this term has no standard meaning in the transmission reservation process. In addition, Powerex pointed out several clerical errors in Idaho Power's proposed OATT.

11. In its filing in Docket No. ER07-1315-000, Idaho Power submitted revisions addressing each of the concerns raised by BPA and Powerex discussed above.⁸ Idaho Power's revisions submitted in Docket No. ER07-1315-000, including the revisions to its Attachment L and its simultaneous submission window provisions, were uncontested and accepted for filing effective September 4, 2007.⁹ We have reviewed Idaho Power's

⁷ On August 31, 2007, Idaho Power filed an errata to its August 30, 2007 filing in Docket No. ER07-1315-001.

⁸ In its protest, Powerex expressed concerns about issues other than Idaho Power's proposed simultaneous submission window. These other issues were not addressed in Idaho Power's filing in Docket No. ER07-1315-000 and are discussed in detail below. Because BPA's protest was limited to issues concerning Attachment L that were addressed in Docket No. ER07-1315-000, we find that BPA's protest is now moot.

⁹ *Idaho Power Co.*, Docket Nos. ER07-1315-000 and ER07-1315-001 (Oct. 24, 2007) (unpublished letter order).

proposed Attachment L and simultaneous submission window provisions submitted on July 13, 2007 in the instant proceeding and find that the revisions Idaho Power made to these tariff provisions, which were accepted for filing effective September 4, 2007, effectively resolve the issues raised by the protestors in the instant proceeding. Accordingly, we will accept Idaho Power's proposed Attachment L and simultaneous submission window provisions, effective July 13, 2007, modified to reflect the revisions accepted on October 24, 2007 in Docket No. ER07-1315-001.

1. Clustering

a. Idaho Power's Filing

12. Idaho Power proposes revisions to its OATT in sections 19 (Additional Study Procedures For Firm Point-To-Point Transmission Service Requests) and 32 (Additional Study Procedures For Network Integration Transmission Service Requests) to address the clustering of transmission service. Idaho Power's proposed section 19.1 (Notice of Need for System Impact Study) provides, in pertinent part:

the Eligible Customer shall timely notify the Transmission Provider if the Eligible Customer requests its System Impact Study to be clustered with another Eligible Customer's System Impact Study. In this notification, the Eligible Customer shall identify the other Eligible Customer(s) (and associated request(s) for Transmission Service) with which it would like to be clustered, and shall indicate whether the other Eligible Customer(s) with which it requests clustering support(s) the clustering request. Idaho Power may, in its discretion, notify Eligible Customers who have submitted Transmission Service requests of potential clustering opportunities. The Transmission Provider will accommodate any reasonable clustering request; however, the Transmission Provider will not consider a clustering request to be reasonable if:

- (i) the cluster is not supported by all Eligible Customers proposed to be in the cluster;
- (ii) the Transmission Provider determines that the requests should be studied individually rather than in a cluster (e.g., studies are geographically diverse or otherwise impact the transmission system in diverse ways such that clustering is not reasonable); or
- (iii) in the Transmission Provider's discretion, the Transmission Provider determines that granting the clustering request is likely to cause the Transmission Provider to miss any deadline set forth in this Tariff.

Once Eligible Customers agree to have the Transmission Provider cluster their System Impact Studies, the Eligible Customers may request to opt out of the cluster. The Transmission Provider will not grant any request to opt out of a

cluster if, in the Transmission Provider's discretion, the Transmission Provider determines that granting the request to opt out of the cluster is likely to cause the Transmission Provider to miss any deadline set forth in this Tariff.

13. In addition, section 19.4 (Facilities Study Procedures) provides:

Eligible Customers in a cluster for purposes of the System Impact Study will not be allowed to opt out of the cluster for purposes of the Facilities Study unless the Transmission Provider determines that it is technically feasible to conduct a Facilities Study for the remaining Eligible Customers in the cluster without performing a new System Impact Study for the remaining Eligible Customers in the cluster.

14. Additionally, Idaho Power proposes to allocate the cost of clustered system impact studies and facilities studies equally among the participants of a cluster study unless the customers in the cluster independently agree to an alternate cost-sharing structure and provide Idaho Power with a copy of the executed alternate agreement.

b. Protest and Answer

15. Powerex notes that under section 19.1 a clustering request will be rejected if not supported by all eligible customers proposed to be in the cluster. Powerex argues that, as presently worded, one customer has the power to deny an entire group of customers the efficiencies that result from clustering. Powerex also states that proposed section 19.1 provides that once eligible customers agree to have the transmission provider cluster their system impact studies, the eligible customers may request to opt out of the cluster. Powerex argues that, when read together, these two clauses would permit Customer A to freely opt out of a cluster and request an individual study, while Customer A's failure to support the cluster would result in denial of the remaining group's cluster request. Powerex requests that the Commission direct Idaho Power to remove these provisions from its proposed section 19.1.

16. Powerex also states that section 19.1 permits Idaho Power to reject a clustering request if, at Idaho Power's discretion, it determines that granting a clustering request is likely to cause Idaho Power to miss any deadline set forth in its OATT. Powerex states that it assumes that the Commission would not look with disfavor on a transmission provider that seeks a one-time waiver of the study deadlines in its OATT where the clustered customers do not oppose an extension. Powerex argues that as a policy matter, transmission providers should not be permitted to unilaterally reject all clusters that might require extended study timelines.

17. In response, Idaho Power states that Powerex is mistaken in its claim that one customer has the power to deny an entire group of customers the efficiencies that result

from clustering. Idaho Power states that while it encourages clusters when there are efficiencies to be gained, it understands that there may be customers who have concerns about clustering with other customers and that it would be inappropriate and inefficient to force customers into clusters. Idaho Power states that if a customer chooses not to participate in a cluster or a customer decides to opt out of a cluster, the remaining customers in the cluster would be able to move forward as their own cluster, with only the customer refusing to cluster receiving an individual study. Moreover, Idaho Power states, in Order No. 890 the Commission stated that transmission providers have “discretion to determine whether a transmission customer can opt out of a cluster and request an individual study.”¹⁰

18. With regard to Idaho Power’s discretion to reject a clustering request if it determines that granting that request would likely cause it to miss a deadline, Idaho Power argues that, because missing study deadlines could ultimately trigger additional posting obligations, filing requirements, and possibly penalties, it is not comfortable assuming any leniency from the Commission.

c. Commission Determination

19. In Order No. 890, the Commission did not generally require transmission providers to study transmission requests in a cluster, although the Commission did encourage transmission providers to cluster studies when it is reasonable to do so. The Commission also explicitly required transmission providers to consider clustering studies if the customers involved request a cluster and the transmission provider can reasonably accommodate the request. As a result, the Commission directed transmission providers to include tariff language in their Order No. 890 compliance filings that describes how the transmission provider will process a request to cluster studies and how it will structure transmission customers’ obligations when they have joined a cluster.¹¹ In addition, the Commission gave each transmission provider discretion to develop the clustering procedures it will use because the transmission provider is in the best position to determine the clustering procedures that it can accommodate and that will prevent a customer from strategically participating in clusters to avoid costs for needed transmission system upgrades.¹²

¹⁰ Idaho Power Answer to Powerex Protest at 9 (*citing* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1371).

¹¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1370-71.

¹² *Id.*

20. We agree with Idaho Power that the Commission gave the transmission provider discretion to determine whether a transmission customer can opt out of a cluster and request an individual study. We find, however, that Idaho Power's provision regarding opting out requires further refinement. Section 19.1 provides that once eligible customers agree to have the transmission provider cluster their system impact studies, the eligible customers may request to opt out of the cluster. However, contrary to its statement in its answer, Idaho Power's proposed clustering provision does not specify that the remaining customers in the cluster can move forward as their own cluster when a customer opts out of a cluster. In addition, Idaho Power has not addressed how it will structure the remaining customers' obligations when one or more participants opt out of a clustered system impact study.

21. In addition, as Powerex noted, section 19.1 permits Idaho Power to reject a clustering request if, at Idaho Power's discretion, it determines that granting a clustering request is likely to cause Idaho Power to miss any deadline set forth in its OATT. We agree with Powerex that when a transmission provider has a provision in its OATT allowing for the clustering of studies, it should not reject cluster requests solely on the basis that such clustered studies may require extended study timelines. If Idaho Power believes that a cluster study could prevent it from meeting its OATT requirements, Idaho Power is free to raise this issue as an extenuating circumstance in a notification filing with the Commission, which will be reviewed on a case-by-case basis.¹³

22. Accordingly, we direct Idaho Power to file, within 30 days of the date of this order, a further compliance filing revising its proposed section 19.1 to specify that the remaining customers in the cluster can move forward as their own cluster when a customer opts out of a cluster, describing how it will structure the remaining customers' obligations when one or more participants opts out of a clustered system impact study, and removing the proposed language allowing Idaho Power to deny a cluster request solely on the basis that granting such clustered study request may cause Idaho Power to miss any deadline set forth in its OATT.

2. Mechanisms for Distribution of Penalty Revenues

a. Idaho Power's filing

23. In its transmittal letter, Idaho Power states that it included in its filing a description of its proposed methodology to comply with the directive in Order No. 890 to distribute certain penalty revenues to non-offending customers and that this proposed methodology

¹³ *Id.* P 1343.

does not require any modifications to its OATT.¹⁴ Idaho Power states that unreserved use penalties in excess of the base point-to-point transmission service charge, as set forth in Schedule 11 (Unreserved Use Penalty) of its OATT, will be distributed on a quarterly basis to all non-offending customers, including point-to-point and network customers and Idaho Power's merchant function on behalf of Idaho Power's native load customers. Idaho Power states that late study penalties, which are collected under sections 19.9 and 32.5,¹⁵ will be distributed on a quarterly basis only to non-affiliated point-to-point and network customers.

24. In addition, Idaho Power states that under its proposed methodology, distributions for each quarter will be based on the non-offending customer's use of the Idaho Power transmission system during the given quarter and that a customer will start anew as a non-offending customer at the beginning of each calendar quarter. Idaho Power states that, consistent with the requirements of Order No. 890, it commits to making annual informational filings with the Commission.

b. Protest and Answer

25. Powerex states that Idaho Power's filing does not clearly describe how a customer would be considered a non-offending customer with respect to distribution of penalty revenues associated with late study penalties.

26. In its answer, Idaho Power states that under Order No. 890, penalty revenues associated with late study penalties are not distributed to non-offending customers, but rather to unaffiliated customers. As a result, Idaho Power contends, Powerex's request for Idaho Power to clarify its penalty distribution methodology relating to late study penalties is baseless.

c. Commission Determination

27. While we agree with Idaho Power that penalty revenues associated with late study penalties are not distributed to non-offending customers but rather to unaffiliated customers, we find that Idaho Power did not propose an allocation methodology for the distribution of revenues from late study penalties or unreserved use penalties in its filing.

¹⁴ Idaho Power July 13, 2007 filing at 3, 7-8. In the section of its transmittal letter entitled "Penalty Distribution Methodology," Idaho Power discusses the distribution of imbalance, unreserved use and late study penalty revenues.

¹⁵ Sections 19.9 and 32.5 are entitled "Penalties for Failure to Meet Study Deadlines" and apply to firm point-to-point transmission service requests and network integration transmission service requests, respectively.

28. As noted in Order No. 890-A, the procedural mechanism for distribution of operational penalties, including late study penalties and unreserved use penalties, set forth in Order No. 890 was somewhat unclear. Accordingly, in Order No. 890-A, the Commission clarified transmission providers' obligations regarding collection and distribution of operational penalty revenues and filing of compliance reports with the Commission.¹⁶ First, if a transmission provider elects to impose unreserved use penalties, it must submit to the Commission a tariff filing under FPA section 205 stating the applicable unreserved use penalty rate. Second, each transmission provider must submit a one-time compliance filing under FPA section 206 proposing the transmission provider's methodology for distributing revenues from late study penalties and, if applicable, unreserved use penalties. This one-time compliance filing can be submitted at any time prior to the first distribution of operational penalties¹⁷ and this distribution methodology need not be stated in a transmission provider's OATT.¹⁸ In addition, transmission providers should request an effective date for this distribution mechanism as of the date of the filing and may begin implementing the methodology immediately, subject to refund if the Commission alters the distribution mechanism on review. Finally, the Commission determined that each transmission provider must report on its penalty assessments and distributions in an annual compliance report to be submitted on or before the deadline for submitting FERC Form-1, as established by the Commission's Office of Enforcement each year.

29. The Commission finds that Schedule 11 of Idaho Power's OATT identifies its proposed unreserved use penalties and when such penalties will be assessed¹⁹ and that sections 19.9 and 32.5 contain Idaho Power's late study penalties. We also find while Idaho Power briefly describes in its transmittal letter how it proposes to distribute these penalties, it does not provide sufficient detail so as to constitute a one-time compliance

¹⁶ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 472.

¹⁷ *Id.*

¹⁸ *Cf. Florida Power & Light Co.*, 122 FERC ¶ 61,079, at P 25 (2008) (noting that Order Nos. 890 and 890-A did not require that the methodology pertaining to the annual informational filings be included in a transmission provider's OATT).

¹⁹ In an order issued on September 10, 2007 in Docket No. OA07-70-000, the Commission conditionally accepted Idaho Power's proposed Schedule 11, effective July 13, 2007, subject to Idaho Power making a compliance filing that identifies the ancillary services charges that will be assessed to transmission customers that fail to reserve sufficient transmission. *See Idaho Power Co.*, 120 FERC ¶ 61,228, at P 14 (2007). On October 10, 2007, as amended on October 15, 2007, Idaho Power submitted a compliance filing in Docket No. OA07-70-001.

filing under FPA section 206 proposing its methodology for distributing revenues as discussed above. For instance, while Idaho Power states that distributions for each quarter will be based on the non-offending customer's use of the Idaho Power transmission system during the given quarter and that a customer will start anew as a non-offending customer at the beginning of each calendar quarter, it is not clear whether Idaho Power intends to define a non-offending customer as one that does not incur the appropriate penalty in a given quarter. Accordingly, we find that prior to the first distribution of its operational penalties, Idaho Power must submit a one-time compliance filing under FPA section 206 proposing its methodology for distributing revenues from late study penalties and unreserved use penalties. This distribution methodology need not be stated in Idaho Power's OATT. We therefore conclude that no additional modification to Idaho Power's OATT addressing the distribution of operational penalties is necessary at this time, given our clarification in Order No. 890-A.

3. Imbalance Energy Revenue Distribution

a. Idaho Power's Filing

30. In its transmittal letter, Idaho Power states that imbalance revenues in excess of incremental cost, as set forth in Schedules 4 (Energy Imbalance Service) and 10 (Generator Imbalance Service) of its OATT,²⁰ will be distributed on a quarterly basis to all non-offending customers, including point-to-point and network customers, including Idaho Power's Power Supply (i.e., merchant) function on behalf of Idaho Power's native load customers. Idaho Power also states that this proposed methodology does not require any modifications to its OATT.

31. In addition, Idaho Power states that under its proposed methodology, distributions for each quarter will be based on the non-offending customer's use of the Idaho Power transmission system during the given quarter and that a customer will start anew as a non-offending customer at the beginning of each calendar quarter. Idaho Power states that, consistent with the requirements of Order No. 890, it commits to making annual informational filings with the Commission.

b. Commission Determination

²⁰ In an order issued on November 16, 2007 in Docket No. ER07-1172-000, the Commission conditionally accepted Idaho Power's proposed Schedules 4 and 10, effective July 13, 2007, subject to Idaho Power making a compliance filing removing a non-conforming provision from Schedules 4 and 10. *See Idaho Power Co.*, 120 FERC ¶ 61,181, at P 28 (2007). On December 14, 2007, Idaho Power submitted a compliance filing in Docket No. ER07-1172-002.

32. In Order No. 890, the Commission determined that charges for both energy and generator imbalances would be based upon a tiered approach that reflects incremental costs. The Commission also required transmission providers to credit revenues in excess of incremental costs to all non-offending customers. As a result, the Commission directed transmission providers to develop, as part of their Order No. 890 compliance filings, a mechanism for crediting such revenues to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.²¹

33. While we agree with Idaho Power that its mechanism for distributing imbalance penalty revenues need not be filed in its OATT,²² we find that Idaho Power's brief description in its transmittal letter is an inadequate response to the Commission's directive that transmission providers file, as a part of their Order No. 890 compliance filings, a mechanism for crediting imbalance penalty revenues to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.²³ It is unclear whether Idaho Power intends to define a non-offending customer as one that does not incur an imbalance penalty during a given quarter. Such a definition of a non-offending customer would be unduly restrictive, unjust and unreasonable.

34. In Order No. 890-A, the Commission clarified that the transmission provider should distribute the penalty revenue received in a given hour to those non-offending customers in that hour, i.e., those customers to whom the penalty component did not apply in the hour.²⁴ Incurring an imbalance penalty for one hour during a quarter should not make a customer ineligible for a share of penalty revenues for the entire quarter. Accordingly, we direct Idaho Power to file, within 30 days of the date of issuance of this order, a further compliance filing with a mechanism for the distribution of penalty revenues that, *inter alia*, appropriately defines non-offending customers and distributes

²¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 663, 667, 727.

²² *Cf. Florida Power & Light Co.*, 122 FERC ¶ 61,079 at P 25.

²³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 727.

²⁴ *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 333.

the penalty revenue received in a given hour to non-offending customers in that hour, consistent with Order No. 890-A.²⁵

4. Attachment J - Procedures for Addressing Parallel Flows

35. The *pro forma* OATT adopted in Order No. 890 includes a blank Attachment J entitled “Procedures for Addressing Parallel Flows” that is to be “filed by the Transmission Provider.” The Commission in the NERC Transmission Loading Relief Order²⁶ amended the *pro forma* OATT to incorporate NERC’s Transmission Loading Relief (TLR) procedures. The Commission also required that every transmission-operating public utility adopting NERC’s TLR procedures file with the Commission a notice that its tariff shall be considered so modified to reflect the use of such procedures. That order addressed the NERC TLR procedures for public utilities in the Eastern Interconnection. Later, in Order No. 693, the Commission approved, as mandatory and enforceable, the IRO-006-3 Reliability Coordination—Transmission Loading Relief Reliability Standard, which includes the NERC TLR procedures and, by reference, the equivalent Interconnection-wide congestion management methods used in the WECC (WSCC Unscheduled Flow Mitigation Plan) and ERCOT (section 7 of the ERCOT Protocols) regions.²⁷ As a result, all transmission providers must complete Attachment J by incorporating either the NERC TLR procedures, WSCC Unscheduled Flow Mitigation Plan, or ERCOT protocol and must provide a link to the applicable procedures.

36. Idaho Power has not filed any procedures in Attachment J. Idaho Power is directed to file, within 30 days of the date of this order, a further compliance filing with a completed Attachment J as shown below:

The North American Electric Reliability Corporation’s (“NERC”)’s Qualified Path Unscheduled Flow Relief for the Western Electricity Coordinating Council (WECC), Reliability Standard WECC-IRO-STD-006-0 filed by NERC in Docket No. RR07-11-000 on March 26, 2007, and approved by the Commission on

²⁵ See *Arizona Public Service Co.*, 121 FERC ¶ 61,247, at P 19 (2007) (requiring a further compliance filing to define non-offending customers and distribute penalty revenue received in a given hour to non-offending customers in that hour); *PacifiCorp*, 121 FERC ¶ 61,223, at P 45 (2007) (same).

²⁶ *North American Electric Reliability Council*, 85 FERC ¶ 61,353, at 62,362 and Ordering Paragraph (B) (1998) (NERC Transmission Loading Relief Order).

²⁷ See *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 Fed. Reg., 16,416 (April 4, 2007), FERC Stats. & Regs. ¶ 31,242 (2007), at P 961-65, *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

June 8, 2007, and any amendments thereto, are hereby incorporated and made part of this Tariff. See www.nerc.com for the current version of the NERC's Qualified Path Unscheduled Flow Relief Procedures for WECC.

5. Rollover Rights Effective Date

37. In Order No. 890, the Commission adopted a five-year minimum contract term in order for a customer to be eligible for a rollover right and adopted a one-year notice period. The Commission determined that this rollover reform should be made effective at the time of acceptance by the Commission of a transmission provider's coordinated and regional planning process. The Commission explained that rollover reform and transmission planning are closely related, because transmission service eligible for a rollover right must be set aside for rollover customers and included in transmission planning.²⁸

38. Idaho Power has included the rollover reforms in section 2.2 of its revised tariff sheets, with a requested effective date of July 13, 2007. However, Idaho Power's Attachment K, setting forth its transmission planning process, which was filed on December 7, 2007 in Docket No. OA08-23-000, has not yet been accepted by the Commission. This is contrary to Order No. 890's requirement that rollover reforms are not to become effective until after a transmission provider's Attachment K is accepted. Therefore, we direct Idaho Power to file, within 30 days of the date of this order, a revised tariff sheet that reflects the previous language of section 2.2. Idaho Power should re-file the rollover reform language established in Order No. 890 within 30 days after acceptance of its Attachment K, requesting an effective date commensurate with the date of that filing.

6. Other Issues

a. Protest and Answer

39. Powerex raised three additional concerns with Idaho Power's filing. First, in the portion of its protest titled "unreserved use penalties," Powerex states that it is unclear whether Idaho Power has specified the charges and penalties and any associated terms and conditions for every instance that Idaho Power's tariff allows it to levy charges or penalties. Powerex points out that while Idaho Power has adopted language from section 28.6 (Restrictions on Use of Service) of the Order No. 890 *pro forma* OATT, it has not specified the applicable charges and penalties as required. Powerex argues that Idaho Power should be required to modify its OATT to specify the applicable charges and

²⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1231, 1265.

penalties, and be prohibited from levying such charges or penalties until Idaho Power makes these modifications.

40. Second, Powerex states that Idaho Power's Attachment A-1 (Form for Service for Resale, Assignment or Transfer of Long-Term Firm Point-to-Point Service), as labeled, is applicable only to long-term firm service and as such is inconsistent with the reassignment provisions set out in Order No. 890. Powerex requests that the Commission clarify that Attachment A-1 should govern reassignment of both long-term and short-term firm point-to-point transmission service.

41. Third, Powerex requests that Idaho Power be required to change section 17.1.2 (Procedures for Arranging Firm Point-To-Point Transmission Service – Application), which references Mountain Time, to refer to Prevailing Pacific Time as in the rest of Idaho Power's OATT. Powerex asserts that Idaho Power has not explained why it has inserted a different time reference in this provision, nor has it clearly defined whether this is Prevailing Mountain Time, Mountain Standard Time or Mountain Daylight Time.

42. With regard to unreserved use penalties, Idaho Power states that on July 13, 2007 in Docket No. OA07-70-000 it filed a limited FPA section 205 rate filing that included its proposed unreserved use penalties and described how Idaho Power will charge for unreserved use.

43. Regarding Attachment A-1, Idaho Power states that because Powerex's comments relate to *pro forma* OATT language, its comments should be made in the broader Order No. 890 rulemaking proceeding and not in relation to Idaho Power's tariff specifically. In addition, regarding its time zones references in section 17.1.2, Idaho Power states that its August 30, 2007 filing in Docket No. ER07-1315-000 included modifications to its OATT to make all references to time zones refer to Prevailing Pacific Time.

b. Commission Determination

44. In Order No. 890, the Commission determined that transmission customers would be subject to unreserved use penalties in any circumstance where the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its OATT.²⁹ As discussed above, Schedule 11 of Idaho Power's OATT identifies its proposed unreserved use penalties and when such penalties will be assessed. In addition, with regard to section 28.6, we find that such provision uses the language from the *pro forma* OATT and is therefore consistent with the language from the *pro forma* OATT and that

²⁹ *Id.* P 834, 848.

no further modifications are necessary to this section. Accordingly, we reject Powerex's request that Idaho Power further modify its OATT to address unreserved use penalties.

45. With regard to Attachment A-1, we will grant Powerex's request to clarify that Attachment A-1 should govern reassignment of both long-term and short-term firm point-to-point transmission service. In Order No. 890-A, the Commission recognized that inclusion of the words "long-term firm" in the title of the form of service agreement and the attached specifications in the new Attachment A-1 to the *pro forma* OATT adopted in Order No. 890 may imply that use of the service agreement is limited to long-term firm point-to-point transactions.³⁰ Accordingly, in Order No. 890-A, the Commission revised section 23.1 of the *pro forma* OATT (Procedures for Assignment or Transfer of Service) and the title of Attachment A-1 to remove "long-term firm." Idaho Power has included the words "long-term firm" in its proposed Attachment A-1. We find however that because Idaho Power and other transmission providers are required to remove that language from their Attachment A-1s when they submit compliance filings pursuant to Order No. 890-A, it is unnecessary to direct Idaho Power to revise its Attachment A-1 in the instant proceeding.³¹

46. Additionally, as noted above, Idaho Power's August 30, 2007 filing in Docket No. ER07-1315-000, which included modifications to unify the time zone references in its OATT, was accepted for filing on October 24, 2007. Thus, Powerex's concerns with Idaho Power's proposed section 17.1.2 have been addressed.

7. Proposed Revisions to Attachment M and Deadlines

a. Idaho Power's Filing

47. Idaho Power proposes to modify certain provisions in Attachment M (Large Generator Interconnection Procedures and Agreement) and to revise deadlines in section 14.6 and 18.3 of its OATT. Specifically, Idaho Power states that it added language to section 5.17.9 of the LGIA that was inadvertently left out of earlier versions of Idaho Power's OATT. In addition, Idaho Power proposes to remove Appendix H to the LGIA (Reliability Management System), as the WECC Reliability Management System is no

³⁰ *Id.* P 424.

³¹ In Order No. 890-A, transmission providers that have not been approved as RTOs or ISOs, and whose facilities are not in the footprint of an RTO or ISO, were directed to submit, within 60 days of publication of Order No. 890-A in the *Federal Register* (i.e., March 13, 2008), section 206 compliance filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890-A.

longer in effect. Idaho Power also states that it is revising deadlines in sections 14.6 and 18.3 of its OATT from 2:00 p.m. to 3:00 p.m. Prevailing Pacific Time to reflect regional practice.

b. Commission Determination

48. In Order No. 890, the Commission stated that compliance filings need only contain the revised provisions adopted in Order No. 890, rather than the transmission provider's entire *pro forma* OATT. The Commission also stated that, in a compliance filing, the revised OATT should only be changed to the extent that the provisions were revised in Order No. 890. Further, if a transmission provider wishes to propose different terms and conditions, it must make a separate FPA section 205 filing.³²

49. We find that Idaho Power's proposed revisions to Attachment M are outside the scope of this Order No. 890 compliance filing.

50. Order No. 890 provides transmission providers the opportunity to submit FPA section 205 filings proposing non-rate terms and conditions that differ from those set forth in Order No. 890 if those provisions are consistent with or superior to the *pro forma* OATT.³³ Idaho Power did not submit these proposed revisions in a filing under section 205 of the FPA nor did it explain in the instant proceeding why its proposed non-conforming tariff provisions are consistent with or superior to the *pro forma* OATT. Accordingly, we reject without prejudice the proposed tariff revisions as beyond the scope of this compliance filing. If Idaho Power wishes to revise these provisions, it must file the proposed revisions in a separate FPA section 205 filing. Therefore, we direct Idaho Power to make a compliance filing, within 30 days of the date of this order, reflecting the removal of these revisions to its Attachment M, and sections 14.6 and 18.3 to bring its OATT in compliance with Order No. 890.

51. Accordingly, we will accept Idaho Power's compliance filing, as modified, to be effective July 13, 2007. We direct Idaho Power to file, within 30 days of the date of this order, a further compliance filing as required above.

³² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at n.106. However, the Commission also noted that to the extent a transmission provider desires to refile its entire OATT in order to simplify pagination or other tariff designation issues associated with implementing the modifications required under the Final Rule, it may do so. *Id.*

³³ *Id.* P 135.

The Commission orders:

(A) Idaho Power's compliance filing in Docket No. OA07-60-001 is hereby accepted, effective July 13, 2007, as discussed in the body of this order.

(B) Idaho Power's compliance filing in Docket No. OA07-60-000 is hereby accepted, as modified, effective July 13, 2007, as discussed in the body of this order.

(C) Idaho Power is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Wellinghoff dissenting in part with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Idaho Power Company

Docket Nos. OA07-60-000
OA07-60-001

(Issued March 19, 2008)

WELLINGHOFF, Commissioner, dissenting in part:

Today, the Commission modifies and accepts Idaho Power's Order No. 890 compliance filing.¹ I dissent from this order in only one respect. I am concerned with Idaho Power's proposal regarding procedures it will use to study requests for transmission service in a group or cluster.

In Order No. 890, the Commission encouraged, but did not require, transmission providers to study transmission requests in a cluster. The Commission did so because we believe clustering studies offer potential benefits of more efficiently designed transmission system upgrades. Clustered studies also can be an important tool in providing transmission access cost-effectively to locational-constrained resources such as solar, geothermal, wind, and hydrokinetic generators.

However, Order No. 890 did require transmission providers to consider clustering studies if requested by customers and if the request can be reasonably accommodated. Accordingly, the Commission required each transmission provider to include tariff language in its compliance filing to describe how it will process a request for a cluster study and how it will structure the transmission customers' obligations when they have joined a cluster. We gave each transmission provider the discretion to develop the clustering procedures it will use because we believed that the transmission provider is in the best position to determine the clustering procedures that it can accommodate.

Idaho Power has taken the approach that it will accommodate any reasonable clustering request, and then defines what it will not consider a reasonable request. In particular, Idaho Power's proposed section 19.1(ii) gives

¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

itself sole discretion to determine whether requests should be studied individually because, for example, the effects are geographically diverse.

While, I agree that transmission service requests that are geographically diverse or would otherwise impact the transmission service in diverse ways are reasonable considerations in assessing whether a clustering request can be reasonably accommodated, I am concerned that Idaho Power provided no further information about what other circumstances might be included in this broad provision. To provide greater certainty for transmission customers on this subject, I would have asked Idaho Power to clarify, in the compliance filing directed in this order, all the criteria for making this determination and a statement that the criteria will be applied in a not unduly discriminatory manner.

For these reasons, I respectfully dissent in part.

Jon Wellingshoff
Commissioner